

PETITION OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FOR WAIVER OF FEDERAL COMMUNICATIONS COMMISSION

REGULATIONS AT 47 C.F.R. §64.1601(b)

RE: CALLING PARTY NUMBERS

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Executive Summary

The National Aeronautics and Space Administration, John F. Kennedy Space Center is requesting a limited waiver of the Federal Communications Commission regulations at 47 C.F.R. §64.1601(b), which restrict telecommunications carriers from transmitting caller ID numbers, also known as “calling party numbers,” when requested by the calling party. The limited waiver requested by KSC is intended to protect the privacy rights of the vast majority of callers who request that their calling party numbers be restricted, while at the same time allowing KSC security personnel to deal more effectively with threatening calls that are of grave concern.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**PETITION OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
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RE: CALLING PARTY NUMBERS**

I. Introduction

The National Aeronautics and Space Administration, John F. Kennedy Space Center (KSC) respectfully petitions the Federal Communications Commission (FCC) for a limited waiver of FCC's regulations at 47 C.F.R. §64.1601(b). Under this regulation, telecommunication carriers are restricted from transmitting a calling party number (CPN) when the calling party requests such restriction. The limited waiver of this regulation requested by KSC will permit carriers to transmit the restricted CPNs of all calls terminating at KSC telephones to a Secure Logix call data information log located at KSC's Central Office Switch. CPNs for all calls terminating at KSC would then be stored in this call data information log and would not be passed on to the telephones called. The CPNs would be stored for a limited period of time during which access to the CPNs would be limited to specifically appointed security personnel responding to threatening or harassing phone calls received at KSC. The purpose of this requested waiver is to allow KSC security personnel and other law enforcement to respond in a

more timely and effective manner to these threatening or harassing telephone calls. Such waiver will satisfy the two-part standard established by the Commission and the courts for granting such waivers, namely, it furthers the public interest in protecting the health and safety of persons at KSC, and there are special circumstances and other considerations that further justify the requested waiver.

II. Factual Background

KSC is an internationally recognized spaceport where most of the United States' manned and unmanned space launches occur. At KSC, a workforce of 17,000 civil service and contractor employees frequently undertake hazardous air and ground operations involving highly flammable and explosive materials in high value state-of-the-art facilities. Given the hazardous nature of these operations, KSC's facilities and operations are spread out over a land area of 219 square miles in a remote area of a large wildlife preserve. As such, KSC provides its own security, fire & rescue, telecommunications, and other utility services 24 hours per day, much as a municipality would for a small town. Telecommunication assets supporting KSC operations include a Central Office Switch facility through which all external calls terminating at KSC are routed. Within the Central Office Switch is a Secure Logix call information data log capable of recording all originating and terminating numbers. If restricted CPNs were transmitted to the call information data log, Secure Logix can be programmed to record the CPN without passing the CPN on to the number being called.

As a focal point of the United States' space program with highly visible federal aerospace facilities, a substantial workforce, and high value assets, KSC has been the

subject of a number of harassing and threatening phone calls. Between 12 and 20 threatening calls, that are considered serious in nature, are received each year at a variety of KSC locations including, but not limited to, the Chief Operator's Office, the Center Director's Office, the Astronaut's Office, and the KSC 911 line.

Unfortunately, the parties perpetrating these calls often use the CPN restriction in order to prevent authorities from timely identifying their location. As the telecommunications carriers serving KSC are bound by the above-referenced regulation, they will not transmit restricted CPNs to KSC, thereby requiring security personnel and other law enforcement to request a trace of such calls. The process involved in tracing a threatening telephone call to its originator can take up to a week to accomplish, and this delay provides the perpetrator of the call the time necessary to evade apprehension and/or act on the threats made. The following are recent examples of this problem:

- In May 2006, a male called KSC saying he was unhappy with the space program and that he didn't like NASA. He then threatened to destroy the Center itself and kill over 30,000 Americans. Immediately upon receipt of the call, the KSC Counterintelligence/Counterterrorism Office (CICI) began tracing the call back to its point of origin. This process involved obtaining the caller ID information from not only the phone company that the call came through to KSC, Bellsouth, but also through all other companies that the phone call traveled through. Through this process it took a week for CICI, in conjunction with the FBI, to find the address of the place in Puerto Rico where the call was made.
- In March 2006, a phone call was received in the Joint Communications Command Center where the caller voiced his unhappiness with NASA and its launches, claiming them to have detrimental effects on his life. He then informed the recipient of his call that he had a hit-list of 10 high profile United States public officials, one of whom was KSC director James W. Kennedy. The tracing of this call also took a week and when his Canadian address was finally discovered, the RCMP arrested the caller on his premises. There they discovered his hit-list and a suitcase packed for his journey to the United States, and presumably KSC. While this caller was captured, he was captured just before he was to embark on his trip to the United States.

- In December 2005, an individual called the Astronaut Office at KSC complaining that the launches of shuttles was responsible for dry spells, flooding, headaches and other assorted maladies. CICI began to trace the call back through the appropriate channels, but before CICI could identify the caller, he arrived at the KSC gate seeking entrance while concealing a weapon. A security gate officer luckily noticed a .357 Magnum on the floor of his car and stopped the caller from entering KSC armed.

As indicated in the examples above, time is of the essence in locating the originator of the threatening phone calls received at KSC, and the time required to trace these calls back through the various telecommunication carriers has significantly hampered and delayed the identification and apprehension of the perpetrators. To date, the authorities have narrowly been able to prevent the threats from being carried out, but the risk to KSC is evident. The amount of time it takes to effectively identify and apprehend those responsible for the above-described security threats can be significantly reduced by allowing KSC to have access to restricted CPNs at the time the calls are made. KSC is therefore requesting a limited waiver of 47 C.F.R. §64.1601(b), as discussed below, to enable security personnel to more timely identify and apprehend the perpetrators of these threats before they have an opportunity to act on them.

III. Protection of Privacy and Waiver Standards

Under 47 C.F.R. §64.1601(b), “[c]arriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller’s number or name, nor may the carrier use the number or name to allow the called party to contact the calling party.” The purpose of this rule is to allow the calling public to exercise a measure of control over the

dissemination of telephone numbers.¹ This rule recognizes that there is a privacy interest, not only in the persons receiving phone calls, but also in those persons making phone calls.²

However, the Commission has recognized that this general rule is not absolute, finding circumstances where the CPN will not be protected, regardless of the caller's privacy or personal security interests. For example, the Commission previously has concluded that, "[t]o the extent that CPN based services are used to deliver emergency services, we find that privacy requirements for CPN based services should not apply to delivery of the CPN to a public agency's emergency line, a poison control line or in conjunction with 911 emergency services."³

Against this background, waiver standards have been developed under which the Commission or its delegatee may waive §64.1601(b) where there is good cause for such waiver. Specifically, waiver may be granted by the Commission if (1) the waiver would better serve the *public interest* than would strict adherence to the general rule; and (2) *special circumstances* warrant a deviation from the general rule.⁴ Circumstances justifying a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."⁵ Also, *other considerations* affecting a waiver include the ability to identify and articulate reasonable standards that are predictable and

¹ *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, 9 FCC Rcd 1764, ¶34 (1994) ("1994 Order").

² *Supra* Note 1, ¶¶ 24-37.

³ *Supra* Note 1, ¶ 37.

⁴ *Northeast Cellular*, 897 F.2d at 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*"); *See also Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services* (Order), 11 FCC Rcd 9622, ¶ 10 (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy* (Memorandum Opinion and Order), 11 FCC Rcd 2535, ¶ 4 (Int'l Bur. 1996).

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("*WAIT Radio*").

workable, and are not susceptible to discriminatory application.⁶ In summary, the Commission may grant waiver of its rules in a particular case only where the relief requested would not undermine the policy objective of the rule in question, and would serve the public interest.⁷

IV. KSC meets the Standards required for a Waiver of 47 C.F.R. §64.1601(b)

The public interests, special circumstances, and other considerations arising from the factual background presented in KSC's petition are strikingly similar to those previously considered by the Commission in a petition by INSIGHT 100 for waiver of §64.1601(b).⁸ INSIGHT 100, an organization comprised of public institutions such as universities and hospitals, provided residential facilities or services, as well as emergency, security, and telecommunications services, to defined geographic areas. INSIGHT 100 claimed that, because restricted CPNs were not being provided to it by telecommunications carriers, it was impaired in its ability to identify threats to on-campus residents or staff, or to dispatch emergency assistance to a caller to whom the university or hospital is responsible.⁹ INSIGHT 100 therefore petitioned for a waiver of §64.1601(b), stating that the telecommunication services provided by INSIGHT 100 entities included Central Office class equipment that could capture restricted CPNs without passing them on to the party called.¹⁰ Moreover, in its petition, INSIGHT 100

⁶ *Northeast Cellular*, 897 F.2d at 1166.

⁷ *INSIGHT 100*, 17 FCC Rcd 223, ¶ 7; *WAIT Radio*, 418 F.2d at 1157.

⁸ *INSIGHT 100*, 17 FCC Rcd 223

⁹ *Supra* note 8, ¶ 4

¹⁰ *Supra* note 8, ¶ 5

indicated that it would institute procedures that would ensure that the captured CPNs were not inadvertently or intentionally released to unauthorized persons.¹¹

Applying the waiver standards to the facts underlying INSIGHT 100's petition, the Commission granted the waiver, finding that it would better serve the *public interest* for INSIGHT 100 entities to be able to provide rapid and appropriate responses to distress calls and threatening or abusive calls.¹² Furthermore, the Commission found *special circumstances* justified such a waiver because INSIGHT 100 entities provided both the end office telecommunications services as well as the security services that would be impaired by any delay in obtaining CPNs.¹³ *Other considerations* affecting the waiver included finding that only a narrow and well-defined class of public institutions qualified for such a waiver, making it predictable, workable, and not subject to discriminatory application.¹⁴ Finally, the Commission noted that the privacy interests of incoming callers would be preserved, as INSIGHT 100 entities would continue to honor callers' requests to restrict CPN, and restricted CPNs would only be released for valid law enforcement purposes under strictly controlled conditions.¹⁵

As in the case of INSIGHT 100, KSC is a public institution with authority over a distinct geographical area. Although KSC does not provide "residential facilities or services," it does provide work place facilities and services 24 hours per day to 17,000 government and contractor employees, to include all security, fire & rescue,

¹¹ *Supra* note 8, ¶ 5, note 2

¹² *Supra* note 8, ¶ 9

¹³ *Supra* note 12

¹⁴ *Supra* note 12

¹⁵ *Supra* note 12

telecommunications, and other utility services. Similar to INSIGHT 100, telecommunication carriers will not transmit restricted CPNs to KSC because of the restrictions contained in 47 C.F.R. §64.1601(b), and KSC security is thereby prevented from timely identifying and locating harassing or threatening callers. Moreover, as in the case of INSIGHT 100, KSC's telecommunications assets include a Central Office switch with equipment (*i.e.*, the Secure Logix call information data log) that is capable of being programmed to record restricted CPNs without passing them on to the party called. KSC proposes to protect restricted CPNs that may be recorded in Secure Logix by:

1. Operating and maintaining Secure Logix in a secure facility, with access to restricted CPN data protected by password and limited to designated telecommunications personnel and security personnel who have signed non-disclosure agreements;
2. Designated telecommunications and security personnel may access restricted CPN data only when investigating harassing or threatening phone calls, and shall document such access as part of the investigative report;
3. Any transmission by KSC of restricted CPNs to other law enforcement agencies will be via secure communications; and
4. Restricted CPNs will remain recorded in the Secure Logix data base for a reasonable period of time and then destroyed.

Under the above circumstances, granting a waiver of §64.1601(b) to KSC will better serve the *public interest* as it will allow KSC to provide rapid and appropriate

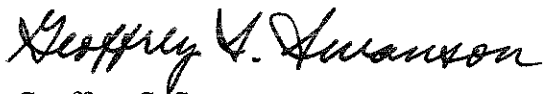
responses to harassing or threatening calls, thereby increasing the safety and security of the KSC workforce. Furthermore, like INSIGHT 100, there are *special circumstances* that further warrant a waiver in that KSC provides both the security service and the end office telecommunication service (through a Central Office switch) to all locations within KSC's distinct geographical boundaries, and the security service would be impaired by any delay in obtaining CPNs. With regard to *other considerations*, a waiver granted to KSC – like INSIGHT 100 – is applicable only to a narrow and well-defined public institution, making it predictable, workable, and not subject to discriminatory application. Finally, the procedures proposed by KSC for accessing and safeguarding restricted CPNs will preserve the privacy interests of incoming callers, as KSC will continue to honor callers' requests to restrict CPN, and restricted CPNs would be released only for valid law enforcement purposes under strictly controlled conditions.

V. Conclusion

Granting the waiver requested in this Petition will serve the public interest by helping KSC protect the safety and security of some 17,000 persons at KSC. Specifically, the waiver will allow KSC security to identify and locate the perpetrators of harassing or threatening phone calls in a more timely and effective manner, before the perpetrators have the opportunity to evade authorities and/or act on the threats made. Granting this waiver to KSC will have only a negligible impact on caller privacy because restricted CPNs will not be disclosed except for valid law enforcement purposes arising from harassment or threats made over the phone. Moreover, the procedures and

safeguards proposed by KSC will ensure that restricted CPNs are not inadvertently or intentionally released. Accordingly, a waiver of 47 C.F.R. §64.1601(b) is justified and should be granted.

Respectfully submitted,

A handwritten signature in black ink, reading "Geoffrey S. Swanson". The signature is written in a cursive, flowing style.

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